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Attorneys for Plaintiffs  
RICHARD ROE, RICHARD ROE II,  
and DON NELSON

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICHARD ROE, RICHARD ROE II, DON A.  
NELSON, Individuals, SANTUCCIO,

Plaintiffs,

vs.

JOHN DOE, MARK CUBAN, an individual;  
and DALLAS BASKETBALL, LTD., a  
partnership, and DOES 1 through 10,

Defendants.

) Case No.: 3:09-CV-682 PJH  
)  
)

**DECLARATION OF JOHN D.  
O'CONNOR IN SUPPORT OF  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO  
DEFENDANTS' SPECIAL MOTION TO  
STRIKE**

) Date: April 22, 2009  
)

) Time: 9:00 a.m.  
)

) Courtroom: 5, 17<sup>th</sup> Floor

I, John D. O'Connor, declare that:

1. I am an attorney duly licensed to practice law in all courts of the State of California and am a principal in the law firm of John D. O'Connor & Associates, attorneys of record for plaintiffs herein. I submit this declaration in support of plaintiffs' opposition to defendants' motion to strike. If called to testify as a witness, I could and would competently testify to the matters set forth in this declaration.

1  
2           2.       A dispute between Nelson and the Dallas Mavericks was previously the subject of  
3 an Arbitration with JAMS (JAMS Reference No. 1310016794) in Dallas, Texas. Discovery,  
4 including depositions and document productions, was conducted by and between the parties in  
5 that Arbitration.  
6

7           3.       Attached hereto as Exhibit 1 is a true and correct copy of the relevant pages of the  
8 deposition transcript of Mark Cuban in the JAMS Arbitration, which transcript is a true and  
9 correct rendition of the questions asked and answers given.  
10

11           4.       Attached hereto as Exhibit 2 is a true and correct copy of the relevant pages of the  
12 deposition transcript of Floyd Jahner in the JAMS Arbitration, which transcript is a true and  
13 correct rendition of the questions asked and answers given.  
14

15           5.       Attached hereto as Exhibit 3 is a true and correct copy of the relevant pages of the  
16 deposition transcript of Don Nelson in the JAMS Arbitration, which transcript is a true and  
17 correct rendition of the questions asked and answers given.  
18

19           6.       Attached hereto as Exhibit 4 is a true and correct copy of the relevant pages of the  
20 deposition transcript of John O'Connor in the JAMS Arbitration, which transcript is a true and  
21 correct rendition of the questions asked and answers given.  
22

23           7.       Attached hereto as Exhibit 5 is a true and correct copy of the initial contract  
24 between Don Nelson and the Mavericks dated February 7, 1997, which contract was produced in  
25 discovery in the JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration,  
26 and was accepted into evidence at the Arbitration hearing.  
27

28           8.       Attached hereto as Exhibit 6 is a true and correct copy of the Fifth Amendment to  
the initial contract between Don Nelson and the Mavericks dated July 7, 2003, which Fifth

1 Amendment was produced in discovery in the JAMS Arbitration, was used in the depositions  
2 taken in the JAMS Arbitration, and was accepted into evidence at the Arbitration hearing.

3 9. Attached hereto as Exhibit 7 is a true and correct copy of a series of emails dated  
4 June 26-27, 2006 exchanged between Mark Cuban and Floyd Jahner, which emails were  
5 produced in discovery in the JAMS Arbitration, were used in the depositions taken in the JAMS  
6 Arbitration, and were accepted into evidence at the Arbitration hearing.

7  
8 10. Attached hereto as Exhibit 8 is a true and correct copy of a series of emails dated  
9 July 26, 2006 (including an attached email dated March 19, 2005) exchanged between Mark  
10 Cuban and Floyd Jahner, which emails were produced in discovery in the JAMS Arbitration,  
11 were used in the depositions taken in the JAMS Arbitration, and were accepted into evidence at  
12 the Arbitration hearing.

13  
14 11. Attached hereto as Exhibit 9 is a true and correct copy of a series of emails dated  
15 June 26-27, 2006 exchanged between Mark Cuban, Floyd Jahner and Lisa Tyner, which emails  
16 were produced in discovery in the JAMS Arbitration, were used in the depositions taken in the  
17 JAMS Arbitration, and were accepted into evidence at the Arbitration hearing.

18 12. Attached hereto as Exhibit 10 is a true and correct copy of a series of emails dated  
19 July 27, 2006 exchanged between Mark Cuban and Floyd Jahner, which emails were produced in  
20 discovery in the JAMS Arbitration, were used in the depositions taken in the JAMS Arbitration,  
21 and were accepted into evidence at the Arbitration hearing.

22  
23 13. Attached hereto as Exhibit 11 is a true and correct copy of an email dated  
24 July 28, 2006 from Floyd Jahner to Don Nelson ([mavs19@aol.com](mailto:mavs19@aol.com)), which email was produced  
25 in discovery in the JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration,  
26 and was accepted into evidence at the Arbitration hearing.



1           14.     Attached hereto as Exhibit 12 is a true and correct copy of a series of emails dated  
2     July 29-31, 2006 exchanged between Don Nelson ([mavs19@aol.com](mailto:mavs19@aol.com)) and Floyd Jahner, which  
3     emails were produced in discovery in the JAMS Arbitration, were used in the depositions taken in  
4     the JAMS Arbitration, and were accepted into evidence at the Arbitration hearing.

5  
6           15.     Attached hereto as Exhibit 13 is a true and correct copy of a proposed Sixth  
7     Amendment to Employment Agreement between Don Nelson and the Mavericks which was  
8     prepared by the Mavericks and forwarded to Nelson, and which was produced in discovery in the  
9     JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration, and was accepted  
10    into evidence at the Arbitration hearing.

11           16.     Attached hereto as Exhibit 14 is a true and correct copy of an email dated  
12     August 3, 2006 from Robert Rowell to John O'Connor, which email was produced in discovery in  
13     the JAMS Arbitration, was used in the depositions taken in the JAMS Arbitration, and was  
14     accepted into evidence at the Arbitration hearing.

15  
16           17.     Attached hereto as Exhibit 15 is a true and correct copy of a letter dated  
17     August 4, 2006 that I prepared and sent to Mark Cuban and Robert Hart.

18           18.     Attached hereto as Exhibit 16 is a true and correct copy of an email (with attached  
19     Employment Agreement) dated August 29, 2006 from Robert Rowell to John O'Connor, which  
20     email and attachment were produced in discovery in the JAMS Arbitration, were used in the  
21     depositions taken in the JAMS Arbitration, and were accepted into evidence at the Arbitration  
22     hearing.

23  
24           19.     Attached hereto as Exhibit 17 is a true and correct copy of the Arbitrator's July  
25     31, 2008 Interim Award in the Arbitration between Nelson and the Mavericks.

26           20.     The Arbitrator issued his Final Decision on September 10, 2008, which was  
27     consistent with the Interim Award.  
28

1           21.     On November 19, 2008, the Texas State District Court in Dallas confirmed the  
2 Final Award of the Arbitrator and entered Final Judgment in favor of Nelson and against the  
3 Mavericks in the amount of \$6,306,185.85 in damages, plus \$816,352.42 in attorneys' fees, plus  
4 postjudgment interest from September 10, 2008 until the judgment is satisfied. Attached hereto  
5 as Exhibit 18 is a true and correct copy of the Final Judgment. The matter is now on appeal by  
6 Dallas Basketball to a Texas State Appellate Court.

8           22.     Attached hereto as Exhibit 19 is a true and correct copy a series of emails dated  
9 September 9, 2008 exchanged between the attorneys for Nelson (Don Colleluori) and the  
10 attorneys for Dallas Mavericks (Geoffrey Harper), and another series of emails between the  
11 attorneys for the parties on November 7-8, 2008.

12           23.     Attached hereto as Exhibit 20 is a true and correct copy of the relevant pages of  
13 the transcript of the JAMS Arbitration that took place over two days beginning June 23, 2008. I  
14 attended the Arbitration and the transcript is a true and correct rendition of the questions asked  
15 and answers given.

17           I declare under penalty of perjury under the laws of the state of California that the  
18 foregoing is true and correct.

19           Date: April 1, 2009

  
John D. O'Connor